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Panel on Home Affairs

Updated background brief prepared by the Legislative Council Secretariat for the meeting on 24 March 2015

Review of the Hotel and Guesthouse Accommodation Ordinance

Purpose

This paper provides background information on the Administration's review of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO"), and highlights major concerns of members of the Panel on Home Affairs ("the Panel") on the subject.

Background

2. Operation of hotels and guesthouses in Hong Kong is regulated by HAGAO. According to the Administration, the primary purpose of HAGAO was to ensure, through the implementation of a licensing regime, that premises intended to be used as hotels and guesthouses¹ meet the building structure and fire safety standards specified in the Buildings Ordinance (Cap. 123) and the Fire Services Ordinance (Cap. 95), so as to safeguard lodgers and the public. The Office of the Licensing Authority ("OLA") under the Home Affairs Department ("HAD") is delegated by the Hotel and Guesthouse Accommodation Authority ("the Authority")² for implementing HAGAO, including issuing licences and performing relevant regulatory and enforcement duties.

¹ As stipulated by HAGAO, any premises providing sleeping accommodation at a fee shall obtain a licence unless they are exempted by the Hotel and Guesthouse Accommodation (Exclusion Order) (Cap. 349C), which provides general exemption to child care centres, bedspace apartments, elderly homes and those premises providing accommodation with a tenancy period of 28 consecutive days or more for each letting.

² In accordance with section 4(1) of HAGAO, the Secretary for Home Affairs is the Authority of HAGAO.

3. In the light of public concerns about the incident of a No. 3 alarm fire at the Continental Mansion in North Point on 29 December 2013 which caused 25 people injured, the Panel discussed with the Administration issues relating to the regulation of guesthouses at its meeting on 10 January 2014. During the meeting, members expressed concerns that the proliferation of guesthouses in residential buildings had caused safety hazards and nuisances to the residents. Members were advised that the Administration had already kick-started the review of HAGAO.

4. Subsequently, at the Panel meeting on 24 July 2014, members were briefed on the public consultation document on "Review of the Hotel and Guesthouse Accommodation Ordinance" ("the consultation document") issued by HAD on 4 July 2014. The consultation document set out various proposed measures to - (a) improve the licensing regime so as to minimize the nuisance or impact caused by licensed guesthouses; and (b) enhance the effectiveness of actions against unlicensed guesthouses. A table summarizing the present situations and the proposed measures as stated in the consultation document is in **Appendix I**.

Members' concerns

5. The Panel discussed with the Administration the review of HAGAO on 23 July 2014 and held a special meeting on 12 September 2014 to receive deputations' views on the consultation document. Major views and concerns of members are summarized below.

Licensing requirements

Consultation with the residents

6. Members expressed support for the Administration's proposal that, apart from the safety matters, the provisions in the deed of mutual covenant ("DMC") and the views of the residents should be considered when vetting and approving an application for guesthouse licence. The Administration was urged to expedite the implementation of the proposed measures so as to minimize the nuisance or impact caused by licensed guesthouses and to enhance the effectiveness of enforcement actions against unlicensed guesthouses.

7. Members, however, expressed diverse views on the three proposed options regarding how to gauge the views of local residents when processing a licence application. The options included (a) conducting local consultation

through District Officers ("Option I"), (b) setting up an independent panel comprising unofficial members to consider local views ("Option II") and (c) setting up a new statutory body responsible for the licensing work ("Option III"). While some members expressed support for the adoption of Option I so as to expeditiously minimize the nuisance or impact caused by licensed guesthouses, some other members considered that it would be more prudent to set up an independent body to consider residents' views before a decision was taken on the licence application.

8. According to the Administration, it was open-minded to the three options and would listen to the views of members and the community during the consultation period. As regards the merits of the three options, the Administration advised that -

- (a) Option I was simple, straight-forward and easy to implement. Its impact on the processing time of an application was relatively small as compared to other options. However, this option might be considered not appropriate nor desirable, due to the absence of an independent body to consider the objections received;
- (b) for Option II, the independent panel could provide impartial advice and make recommendation having regard to all relevant factors. It was believed that the recommendation made by the independent panel would be more acceptable to the parties concerned; and
- (c) for Option III, the decision to grant or renew a licence was made by independent unofficial members after careful consideration of all relevant factors including local views. It might be perceived as more impartial, legitimate and acceptable. However, as this involved fundamental and substantial changes to the existing licensing regime, it would take longer time to revamp the procedures for processing applications and work out the detailed consultation arrangements before implementation.

Provisions in DMC

9. Members noted that the Administration proposed to amend HAGAO to empower the Authority to refuse issuance/renewal of licences or to cancel existing licences if DMC of the building concerned contained explicit restrictive provisions stipulating that guesthouse operations or commercial activities were not allowed in the building or the premises were for "private residential use" only. Concern was raised about the future possible proliferation of guesthouses in residential buildings, the DMC of which did not

contain such explicit restrictive provisions, after the proposed amendments were made to HAGAO.

10. The Administration advised that the consultation document was proposing to take into account residents' views even if the DMC concerned did not contain any explicit restrictive provisions. Irrespective of which of the three options of local consultation proposed in the consultation document was adopted eventually, the proposed measure of engaging the public in the consultation process would serve to balance the interests of all parties.

11. Some members suggested that amendments should be made to HAGAO to the effect that guesthouse operation should, in future, be confined to commercial buildings or the commercial part of composite residential/commercial buildings and aside from that, the Administration should explore the feasibility of converting industrial buildings for use as premises for operating guesthouses. The Administration advised that the proposals involved substantial and fundamental changes to the existing licensing regime. While it was willing to explore their feasibility, careful consideration had to be given to aspects such as the risk level, structural designs and the safety factor of design when deciding whether commercial or industrial buildings should be used for operating guesthouses.

Impact on the trade

12. Some members were concerned about the impact of the proposed new measures of taking into account DMC provisions and the views of local residents in the licensing process on existing licensed guesthouses' continued operation. There was concern that the proposed measures might eventually result in closure of business of many licensed guesthouses, adversely affecting the tourism industry. These members were of the view that in contemplating any changes to the existing licensing regime, the Administration should balance the interests of relevant parties and introduce complementary/facilitating measures to help existing licensed guesthouses operators to meet the new requirements. The Administration should also be mindful of the need of some tourists for budget accommodation when visiting Hong Kong. There was a suggestion that the Administration should explore the feasibility of allowing the use of certain land/industrial buildings for guesthouse operation and consider developing home-stay lodgings in rural areas.

13. The Administration reiterated that the consultation document aimed primarily at improving the licensing regime so as to minimize the nuisance and inconvenience caused by licensed guesthouses to local residents and members of the public, and enhancing the effectiveness of enforcement actions against

unlicensed guesthouses to provide better protection to the lodgers and the public. In drawing up the proposed legislative amendments, relevant bureaux and departments had been consulted. The Administration advised that it was aware of the possible impact of the proposals on existing licensed guesthouses. There were suggestions from some quarters of the community as well as the trade proposing measures to help existing licensees ride over the difficult time, such as the provision of platforms for parties affected to discuss and sort out their differences over a licence application and a transitional period to facilitate the trade's preparation for the implementation of the proposed enhancements to the licensing regime. The Administration assured members that it was not its intention to eradicate licensed guesthouses and would maintain an open mind on the suggestions. A decision would be made in light of the views collected during the consultation period.

14. At the special meeting of the Panel on 12 September 2014, some members pointed out that HAGAO was enacted in 1991 to regulate the operation of hotels and guesthouses in Hong Kong. While hotels, guesthouses, holiday camps and holiday flats all fell within the ambit of HAGAO, some provisions had become outdated and needed to be reviewed. The Administration should conduct a comprehensive review on the current licensing regime governing hotels and guesthouses, in the light of their difference in size, mode of operation and facilities etc. and formulate a regulatory system which would foster healthy development of the guesthouse industry.

15. The Administration advised that under HAGAO, the terms "hotel" and "guesthouse" carried the same meaning and no differentiation between the two was made. There had been suggestions from the hotel industry that in the light of their difference in size, mode of operation and facilities etc., different types of licence should be issued to purpose-built hotels and guesthouses in multi-storey residential buildings. The Administration considered it helpful to facilitate tourists in choosing suitable sleeping accommodation, and therefore proposed in the consultation document to issue "hotel licence" to purpose-built hotels and "guesthouse licence" to other types of short-term sleeping accommodation located in residential buildings.

Appeal mechanism

16. Concern was raised about the appeal channels available for the aggrieved parties, including the applicant or the residents, who might be dissatisfied with the decision made by the Authority. There was a view that a fair appeal mechanism should be established to allow aggrieved parties to seek review of the Authority's decisions pursuant to HAGAO.

17. The Administration advised that the decision to grant or renew a licence was made after careful consideration of all relevant factors, including local views. To ensure that the process was fair and impartial, both the applicant and the objectors would be given a fair chance to express their views and make statements. In addition, the applicant and the objectors could appeal to the Appeal Board (Hotel and Guesthouse Accommodation) pursuant to HAGAO.

Enforcement actions against unlicensed guesthouses

18. Expressing concern about the relatively small numbers of inspection and prosecutions against unlicensed guesthouses, members questioned whether the Administration had deployed sufficient and dedicated manpower to conduct inspections on suspected unlicensed guesthouses. Noting various problems, such as the existence of "shadow guesthouses" (i.e. licence-holders making use of their licensed premises for unlicensed guesthouse operation at other premises) and some property owners operating unlicensed guesthouses by renting out their premises under "pseudo" tenancy terms and conditions, members considered that it might be necessary to amend the legislation in order to combat more effectively such unscrupulous practice. Concern was raised that the penalties imposed on convicted cases of unlicensed guesthouses did not appear to have a sufficient deterrent effect against the unlawful operation of unlicensed guesthouses.

19. According to the Administration, over the past few years, there had been multifold increases in enforcement raids including joint departmental operations against suspected unlicensed guesthouses. However, OLA had encountered great difficulties in securing sufficient admissible evidence to prove that unlicensed guesthouse activities were taking place/had taken place at those premises and the persons therein were operating, keeping, managing or otherwise controlling that guesthouse. At present, most of the prosecution cases had to rely on decoy operations to collect sufficient evidence. It was not uncommon for OLA officers to be refused entry, even though they were undercover. Even with sufficient evidence, if the owner or the operator was not caught red-handed and lodgers/tourists were unwilling to give statement or testify in court, it was still very difficult to institute prosecution against them and OLA might only be able to prosecute the keeper who was employed to manage the unlicensed guesthouse.

20. Members noted that the consultation document set out a number of proposed amendments to HAGAO with a view to facilitating the collection of evidence for prosecution purposes and enhancing the deterrent effect of penalties. There was a view that the proposed inclusion of "deeming provisions" in HAGAO would facilitate the collection of evidence for the

instigation of prosecutions against operators of unlicensed guesthouses, as "the deeming provision" stipulated that - (a) to the effect that until the contrary was proved, any premises which were found to be offering or to have provided short-term sleeping accommodation at a price should be deemed to be operated as a guesthouse; and (b) the property owner, tenant or occupier of the premises concerned should also be deemed to be the operator of the guesthouse. There was another view that apart from proposing an increase in the maximum penalty for operating unlicensed guesthouses, consideration should be given to specifying the minimum level of penalties to be imposed by the courts under HAGAO.

Latest development

21. The public consultation exercise conducted by HAD lasted for eight weeks from 4 July 2014 till 28 August 2014. The Administration will report to the Panel on the outcome of the public consultation at the meeting on 24 March 2015.

Relevant papers

22. A list of relevant papers at the Legislative Council website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
13 March 2015

**The present situations and proposed improvement measures
as stated in the public consultation document on
"Review of the Hotel and Guesthouse Accommodation Ordinance"**

	Present situations	Proposed improvement measures
<i>Licensing regime</i>		
Consideration of the Deed of Mutual Covenant ("DMC")	There is currently no clear provision in the Hotel and Guesthouse Accommodation Ordinance ("HAGAO") to empower the Hotel and Guesthouse Accommodation Authority ("the Authority") to consider the provisions of DMC.	The Administration proposes to amend HAGAO to - <ul style="list-style-type: none"> (a) enable the Authority to refuse to issue/renew licences or cancel the existing licences where DMC of the building concerned contains explicit restrictive provisions stipulating that hotel/guesthouse operations or commercial activities are not allowed in the building concerned, or the premises are for "private residential use" only; and (b) require the applicant to submit a certificate signed by a solicitor affirming that there are no such explicit restrictive provisions in DMC.
Local consultation	There is currently no clear provision in HAGAO to empower the Authority to take into consideration local views in the licensing process.	The Administration proposes to amend HAGAO. Three possible options are set out as follows - <ul style="list-style-type: none"> (a) Option I - conducting local consultation through District Officers; (b) Option II - setting up an independent panel to consider local views; and (c) Option III - setting up a new statutory body responsible for the licensing work.

	Present situations	Proposed improvement measures
Other enhancements	The Office of the Licensing Authority ("OLA") is not empowered to consider the conviction records of applicants in processing a licence application.	The Administration considers it reasonable and necessary to amend HAGAO to introduce a requirement for the guesthouse licensing regime that the applicant must be "fit and proper".
	There is currently no mandatory requirement in HAGAO and in the licensing conditions for guesthouse licensees to procure third-party liability insurance for their guesthouses.	The Administration proposes to require all guesthouse licensees to procure third-party risk insurance for their guesthouses.
	There are existing provisions under HAGAO requiring the guesthouses to be under the "continuous and personal supervision" of the applicants/licencees.	The Administration proposes to make it clear by specifying in the licensing conditions that the licensee shall provide a 24-hour manned reception counter inside their guesthouses. No legislative amendment will be required.
	Under the definitions of HAGAO, the terms "hotel" and "guesthouse" carry the same meaning and no differentiation is made.	The Administration proposes to issue "hotel licence" to purpose-built hotels and "guesthouse licence" to other types of short-term sleeping accommodation located in residential buildings. It can be achieved through administrative arrangement without legislative amendment.
<i>Enforcement against unlicensed guesthouses</i>		
Premises for unlicensed guesthouse	To instigate a prosecution, OLA has to collect sufficient admissible evidence pursuant to the Evidence Ordinance (Cap. 8) and prove beyond reasonable doubt that the defender has committed an offence under HAGAO. As	The Administration proposes to add new "deeming provisions" in HAGAO to the effect that until the contrary is proved, any premises which are found to be offering or have provided short-term sleeping accommodation at a price shall be deemed to be used as a guesthouse. The property owner,

	Present situations	Proposed improvement measures
	a result, most of the prosecution cases have to rely on decoy operations in order to collect sufficient evidence.	tenant or occupier of the premises concerned shall also be deemed to be the operator of the guesthouse.
Entry to a suspected unlicensed guesthouse	Section 18(a) of HAGAO currently empowers the public officer authorized by the Authority, without warrant, at all reasonable times to enter and inspect any premises which he has reason to suspect are used as a guesthouse.	The Administration proposes to make provision to allow OLA to apply to the Magistrate's Court for warrants to facilitate its public officers to enter into, and break in if necessary, individual premises for inspection and enforcement actions.
Penalties	Any person who operated an unlicensed guesthouse is liable on conviction to a fine of \$200,000 and to imprisonment of two years.	The Administration proposes to - (a) increase the maximum fines for operating unlicensed guesthouses from \$200,000 to \$500,000 and imprisonment from two years to three years; and (b) amend HAGAO to empower the OLA to apply to the Court, upon the second conviction of an unlicensed guesthouse, to issue a Closure Order against the relevant premises for six months.

Source: The public consultation document on "Review of the Hotel and Guesthouse Accommodation Ordinance" issued by the Home Affairs Department on 4 July 2014.

**Relevant papers on
Review of the Hotel and Guesthouse Accommodation Ordinance**

Committee	Date of meeting	Paper
Panel on Home Affairs	10.1.2014 (Item V)	Agenda Minutes
	23.7.2014 (Item IV)	Agenda Minutes
	12.9.2014 (Item I)	Agenda Minutes Administration's paper providing supplementary information in response to members' requests at the special meeting (LC Paper No. CB(2)535/14-15(01))

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